

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 213 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NANJI KANJI GOR & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR YS MANKAD for Petitioners

MR HL JANI for Respondents No. 1, 2 & 3

None present for Respondents No. 4, 5, 6

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/04/97

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. The petitioners, Surveyors in the office of the Settlement Commissioner and Director of Land Records, Government of Gujarat, filed this Special Civil Application before this Court and prayer has been made that by issuing an appropriate writ, order or direction the respondents No.1, 2 and 3 be directed to consider the petitioners for

promotion to higher post, and then to promote them to the higher post.

2. All the petitioners were appointed as Surveyors in the erstwhile State of Kutch. One of the qualifications for appointment on the post of Surveyor in the then State of Kutch was to pass the Survey Training Class Examination. It is not in dispute that all the petitioners have passed that examination.

3. On the formation of the Bombay State, the petitioners were absorbed in the Bombay State and on further bifurcation of the said State they have come in the State of Gujarat.

4. In the petition, the petitioners have not given out the details of service of all the petitioners. The facts have only been stated of the petitioner No.1. The petitioner No.1 was appointed as Surveyor on 1st April, 1953. On 18th May, 1960, he was promoted to the post of Nimtandar as per the seniority amongst the Kutch District Department employees. He was reverted from this post on 8th March, 1962. The petitioner has stated that this reversion was for the reason that in a common seniority list of Saurashtra and Kutch employees his position was shown at a lower number. In respect of the Surveyors of ex-Kutch State and Saurashtra they have to pass, in the former case Survey Training Class Examination and in the latter case, Sub Service Departmental Examination. It is a fact that a common seniority list of the employees of ex-Kutch and Saurashtra has been prepared. So Sub Service Departmental Examination and Survey Training Class Examination was considered to be equivalent. The gradation list has been prepared, later on, showing the position as on 1-1-1981 in respect of Surveyors employed in the office of the Superintendent, Land Records, Rajkot Circle, in which the names of the petitioners have been placed above the names of the respondents No.4, 5 and 6. The respondents No.4, 5 and 6 were promoted on 28th January 1982 and 15th June, 1982 on the higher post. The petitioners protested the promotion of those persons who were junior to them. They made a representation, but no decision has been taken thereon, and as such, they approached this Court by way of this petition.

5. In reply to the Special Civil Application, the respondents No.1, 2 and 3 have given out the justification to supersede the petitioners in the matter of promotion, that they have not passed the Sub Service Departmental Examination, and as such they were not

eligible for promotion.

6. Reliance in this respect has been placed on the resolution dated 21st January, 1960, and it is contended that on formation of the State of Gujarat, the aforesaid resolution shall also apply to the subordinate employees of the Land Records Department. The resolution dated 21st January, 1960 is on the record of this Special Civil Application as annexure 'E'. The Sub Service Departmental Examination Rules for the subordinates service of the Revenue Department prescribed by the pre-reorganised Bombay State Government were made applicable to the Government servants in the subordinate Revenue service in Kutch District. The Clerks and the Talatis were permitted to appear for the Sub Service Departmental Examination and they were required to pass the said examination within four years from the date of issue of those orders with three chances and some further grace chance has also been provided. Clause II of that resolution provides that the Government servants who have already passed the Revenue Officials' Training Class Examination prescribed by the ex-Kutch State Government should be exempted from passing the Sub Service Departmental Examination. The Clerks and Talatis who have not passed the Revenue Officials' Training Class Examination should pass the Sub Service Departmental Examination in accordance with the orders issued in Para-1 of the said resolution. Further recital in the resolution is that so far as the confirmed or officiating Clerks and Talatis allocated from the former Kutch State who enjoy the protection under the Allocated Government Servants' (Absorption, Seniority, Pay and Allowances) Rules, are concerned, if they do not pass the Sub Service Departmental Examination in accordance with the orders issued in the resolution they should not be promoted to the higher post unless Government considers grant of exemption in suitable cases.

7. So reading of this resolution gives out that those Talatis and Clerks who had passed earlier the Revenue Officials' Training Class Examination were exempted from passing of the Sub Service Departmental Examination.

8. The learned counsel for the respondents during the course of arguments and also in the reply of the Special Civil Application stressed that the petitioners have not passed the Revenue Officials' Training Class Examination. There is no dispute on this question, but the petitioners who were appointed on the post of Surveyors were not required to pass this Revenue

Officials' Training Class Examination which was prescribed for Clerks and Talatis. For Surveyors, another examination, namely, Survey Training Class Examination course was to be undergone, which all the petitioners have undergone. The resolution on which the reliance has been placed by the respondents, though pertains to the ex-Kutch employees, but that pertains to Clerks and Talatis. It is true that the post of Surveyor is a subordinate post and if this resolution is applicable to all the subordinate employees then the training or course which has been undergone by the petitioners prescribed for the Surveyors should have been considered to be sufficient and they should have been exempted from passing of the Sub Service Departmental Examination as the Clerks and Talatis of ex-Kutch have been exempted who have passed the Revenue Officials' Training Class Examination.

9. The learned counsel for the petitioners made a reference to the order of the Superintendent, Land Records, Rajkot Circle dated 23rd June, 1982, which pertains to Shri M.R. Barot, a Surveyor. Shri Barot was appointed as Surveyor in ex-Kutch State. He had passed the examination of Survey Training which has been passed by the petitioners. Shri Barot's grade increments were stopped and the recovery was also ordered to be made on the ground that he has not passed the Sub Service Departmental Examination. Under this order it has been held that Shri Barot who has passed the Survey Training Examination in ex-Kutch State is exempted from passing of the Sub Service Departmental Examination.

10. Otherwise also, I do not find any justification not to exempt the Surveyors of ex-Kutch State from passing of the Sub Service Departmental Examination who had passed the Survey Training Class Examination of ex-Kutch State when the Clerks and Talatis of the ex-Kutch State who had passed the Revenue Officials' Training Class Examination have been exempted from passing of the Sub Service Departmental Examination. It is not the case of the respondents in the reply as well as during the course of arguments that the Surveyors were also required to pass the Revenue Officials' Training Class Examination. From the nature of the duties to be performed by the Clerks and Talatis on one hand and the Surveyors on the other, the different training has to be prescribed. The defence which has been taken by the respondents that no exemption could have been granted to the petitioners from passing of the Sub Service Departmental Examination as they have not passed the Revenue Officials' Training Class Examination is not

tenable. It is a case where the low paid employees have been dealt with in most arbitrary manner. Their just right of considering them for promotion has been denied to them on wholly untenable ground. They have not been treated equally. In discriminatory manner their cases have been dealt with. These low paid employees filed a representation to the respondents, but no decision has been taken on their representation and they have to come to the Court. Though they have come to the Court in the year 1983, but it is not the case where it can be said that in 1980s the litigations did not cost. I have taken from the counsel for the petitioners the expenses which have been incurred by the petitioners in filing of this Special Civil Application and he has given out that about Rs.4000/- has been incurred. That has been a tax on these low paid employees because of the inaction or omission or arbitrary act on the part of the respondents No.1, 2 and 3.

11. In the result, this writ petition succeeds and the same is allowed. It is hereby declared that the petitioners are exempted from passing of the Sub Service Departmental Examination. The respondents No.1, 2 and 3 are directed to consider the case of the petitioners for promotion to the higher post with reference to the date from which the respondents No.4, 5 and 6 were given promotion. In case, on considering their cases, they are found suitable for promotion then they shall be entitled for all the consequential benefits which follow therefrom. The respondents No.1, 2 and 3 are directed to undertake the exercise of considering the case of the petitioners for promotion within a period of three months from the date of receipt of certified copy of this order. In case they are found suitable for promotion then the calculation of arrears of the salary as well as the revision of pension, gratuity and other retirement benefits, in case of those petitioners who have retired, should be made and the amount of arrears should be paid to them within a period of three months next thereafter. The pension should also accordingly be revised and the arrears of pension should also be determined within the aforesaid period. The respondents No.1, 2 and 3 are further directed to pay Rs.4000/- by way of costs of this petition to the petitioners. The petitioners shall share equally this amount of the costs. Rule is made absolute in the aforesaid terms.

zgs/-

